



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 33815651

Date: NOV. 18, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a business-owner and inventor, seeks classification as an individual of extraordinary ability. Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand this matter for the entry of a new decision consistent with the following analysis.

I. LAW

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner may demonstrate international recognition of a beneficiary's achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, a petitioner must provide sufficient qualifying documentation demonstrating that a beneficiary meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner is the founder and manager of a company that provides maintenance and emergency snow removal and sanitation services. The Petitioner has patented several inventions, including technology to operate snow-removal vehicles by wireless remote-control, which is regularly used in his company's contract work with government and institutions in China. The Petitioner intends to continue his work by starting a business in the United States.

Because the Petitioner has not indicated or shown that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Director determined the Petitioner did not establish that he meets the claimed criteria at 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), (v), (vi), (viii), or (ix). On appeal, the Petitioner asserts that he meets these criteria and indicates that the Director did not fully evaluate the supporting evidence. Upon review, we conclude that the Director's decision does not provide a complete analysis and full explanation of the reasons for denial with respect many of the criteria that the Petitioner claims to meet. An officer must fully explain the reasons for denying a visa petition in order to allow a petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

For example, regarding 8 C.F.R. § 204.5(h)(3)(i), the Petitioner submitted documentation for awards that he has won, including recognition as a National Outstanding Entrepreneur [REDACTED] [REDACTED] from the [REDACTED] and his receipt of the Top Ten Pioneers of the [REDACTED] at the [REDACTED]. In denying the petition, the Director stated that the Petitioner did not submit documentation of media coverage to establish that the awards are nationally or internationally recognized, which the Petitioner asserts on appeal is not required evidence and is a factor in the Director's decision that does not account for the specialized nature of the field of heavy industrial technology. The Petitioner also initially submitted documentation to demonstrate that his awards are nationally known within the enterprise management and public emergency management industries as conferring recognition of excellence in leadership. Evidence includes news articles, information from the awarding organizations and from government websites, and letters from professionals in the Petitioner's field. The Director did not address this evidence, stating only that the Petitioner submitted evidence that included "unreliable sources" that carry "no evidentiary weight within the proceedings."

Further, regarding 8 C.F.R. § 204.5(h)(3)(iii), the Petitioner submitted documentation showing that he has been interviewed by several media outlets about his business, and the Director asserted that these articles did not constitute professional or major media because their sources were platforms open to the public that allowed for self-publication. The Director did not, however, address documentation submitted in response to a request for evidence (RFE) to clarify the operation of some of these websites, including a document from the International Communications Consultancy Organisation which discusses information collection in China. The Director also did not address an article in the record from *China Construction News* discussing the Petitioner's company's response to the pandemic early in 2020 under the Petitioner's leadership. The translated article shows the title, date, and author, and documentation demonstrating its use as an information source in an article by Reuters—an internationally known news agency.

Additionally, regarding 8 C.F.R. § 204.5(h)(3)(viii), the Petitioner submitted news articles, letters from professionals in the industry, and copies of financial information and contracts which show that the Petitioner's company consistently works with publicly known entities in China, including government institutions and airports, and was contracted to provide services for the 2022 Winter Olympic Games. The Petitioner also submitted documentation demonstrating that his company has won numerous awards within the industry and has achieved specific standards set by the government to operate as an academician workstation, a provincial-level technical center, and an enterprise design center—the requirements of which involve investments and successes in research and development. The record also includes documentation from a government source citing the Petitioner's company among recognized brand names in China. The Director did not specifically address this evidence and turned again to general assertions concerning “unreliable internet sources.”

As explained previously, an officer must provide the reasons for denying a visa petition in order to allow a petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. On remand, the Director should analyze the specific evidence submitted to establish whether, based on a preponderance of the evidence, the Petitioner has met the requirements of at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Director should ensure that the decision, if averse to the Petitioner, provides adequate reasoning to explain why the submitted evidence is insufficient to meet the Petitioner's burden of proof.

Finally, we observe that the Director dismissed English translations of evidence that he stated were “not properly certified” because the certification did not “specifically identify the document or documents it purportedly accompanies”; however, our review of the record shows that, in response to the RFE, the Petitioner submitted an updated affidavit certifying the accuracy of the translations and listing the documents translated. Accordingly, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision, consistent with our discussion above and taking into consideration all properly certified English translations.

III. CONCLUSION

Based upon the deficiencies discussed above, we will withdraw the Director's denial of the petition and remand the matter for further review and entry of a new decision. The Director may request any additional evidence considered pertinent to the new determination and any other issues. As such, we

express no opinion regarding the ultimate resolution of this matter on remand. Should the Director conclude upon review that the Petitioner meets three of the evidentiary criteria, the new decision should include a final merits analysis of the record evaluating whether the Petitioner has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim, his status as one of the small percentage at the very top of his field of endeavor, and that his achievements have been recognized in the field through extensive documentation. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.